

NOT FOR PUBLICATION (Upload to www.vid.uscourts.gov)

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CHARLES JAMES WALKER,

Plaintiff,

V.

HON. IVE A. SWAN, QUEEN TERRY,
DOUGLAS SPROTTE, and MARCIA
RESNIK,

Defendants.

Civ. No. 1998-086

MEMORANDUM

The plaintiff in this matter, Charles Walker ["Walker" or "plaintiff"], has challenged the procedures followed and the actions taken by the several defendants during the course of the prosecution of Walker in the Territorial Court on a criminal information. As redress, Walker seeks injunctive and equitable relief against the defendants, asserting that each defendant has violated his constitutional rights and should be subject to liability pursuant to 42 U.S.C. § 1983. Each defendant has filed a motion to dismiss the complaint. The plaintiff, in response, filed a motion requesting the Court to dismiss his complaint against all the defendants without prejudice.

Walker's request for injunctive relief is now moot as he has been convicted following a jury trial.¹ Walker's request for equitable relief also is deficient. His claims against the Honorable Ive A. Swan ["Swan"], a judge of the Territorial Court who presided over Walker's criminal case which gives rise to this civil action, and Douglas Sprotte ["Sprotte"], an Assistant Attorney General and the prosecutor in the underlying criminal case, fail because both Swan and Sprotte are protected by judicial and prosecutorial immunity, respectively, for acts made within their official judicial and prosecutorial functions. See *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967) (finding that judges enjoy immunity from § 1983 civil rights claims); *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976) (holding that prosecutor enjoys absolute immunity from § 1983 liability); *Bauers v. Heisel*, 361 F.2d 581, 589-90 (3d Cir. 1966) (same); see also V.I. CODE ANN. tit. 4, § 242 (judges are immune from civil liability).

Walker also has sued Attorney Queen Terry ["Terry"], an Assistant Territorial Public Defender who initially represented Walker in the criminal matter, and Attorney Marcia

¹ See *Government of the Virgin Islands v. Walker*, Crim. No. F25/1997 (Terr. Ct.), appeal docketed as Crim. App. No. 1998-186 (D.C. App. Div.).

Resnik ["Resnik"], a private attorney appointed to represent Walker after Terry withdrew from the case. Although styled as a Section 1983 claim, Walker's assertions amount to a claim of ineffective assistance of counsel.

Walker's claims are properly addressed through his direct appeal² or through a collateral attack. See *Wyatt v. Cole*, 504 U.S. 158, 163-64 (1992) ("Judicial immunity apparently originated . . . as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error."); *Imbler*, 424 U.S. at 427 ("The ultimate fairness of the operation of the system itself could be weakened by subjecting prosecutors to § 1983 liability. Various post-trial procedures are available to determine whether an accused has received a fair trial. These procedures include the remedial powers of the trial judge, appellate review, and state and federal post-conviction collateral remedies.").

Accordingly, Walker's claims against Swan, Sprotte, Terry, and Resnik will be dismissed. An appropriate order is attached.

² Walker's direct appeal of his criminal conviction is pending before the Appellate Division of this Court. (See *supra* note 1.)

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ENTERED this 2d day of February, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court
By:_____
Deputy Clerk

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CHARLES JAMES WALKER,

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HON. IVE A. SWAN, QUEEN TERRY,
DOUGLAS SPROTTE, and MARCIA
RESNIK,

Defendants.

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ORDER

For the reasons set forth in the accompanying memorandum
of even date, it is hereby

ORDERED that the plaintiff's claims against the Honorable
Ive A. Swan are **DISMISSED WITH PREJUDICE**;

ORDERED that the plaintiff's claims against Assistant
Attorney General Douglas Sprotte are **DISMISSED WITH PREJUDICE**;

ORDERED that the plaintiff's claims against Assistant
Territorial Public Defender Queen E. Terry and Attorney Marcia
Resnik are **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that the Clerk shall **CLOSE** this file.

ENTERED this 2d day of February, 2000.

FOR THE COURT:

_____/s/____

Thomas K. Moore
District Judge

Walker v. Swan
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Order
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ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
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